

**Amendment and Response**

Applicant: Mark W. Minné

Serial No.: 10/051,571

Filed: January 17, 2002

Docket No.: 10003994-1

Title: MEMORY CARD ACCESS INDICATOR SYSTEM

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**REMARKS**

This Response is in reply to the Non-Final Office Action mailed June 11, 2003. Claims 1-22 were rejected. With this Response, no claims have been amended. Claims 1-22 remain pending in the application and are presented for reconsideration and allowance.

**Claim Rejections under 35 U.S.C. § 102**

In the Office Action, claims 1-3, 6, 8-9, 13-15, 16-20 and 22 were rejected under 35 U.S.C. 102(e) as being anticipated by Nishizawa et al, Japanese Patent No. JP02001266098A ("Nishizawa"). Nishizawa has a publication date of September 28, 2001, which is prior to the January 17, 2002 filing date of the second invention, and was said to constitute prior art under 35 U.S.C. § 102(e). Although cited as prior art under 35 U.S.C. § 102(e), Nishizawa has not been filed in the United States and should more accurately be characterized under 35 U.S.C. § 102(a).

However, the Nishizawa reference can be removed as prior art by an appropriate showing under 37 C.F.R. § 1.131. Since Nishizawa is defined as prior art under 35 U.S.C. § 102(a), it can be removed as prior art if the Applicant's prove a date of invention predating the Nishizawa publication date of September 28, 2001. As such, Applicant is filing herewith a Declaration under 37 C.F.R. § 1.131 to swear behind the publication date of September 28, 2001 to remove the Nishizawa reference as prior art.

With removal of the Nishizawa reference in light of the Declaration under 37 C.F.R. § 1.131, the rejection of independent claims 1, 13, and 22 under 35 U.S.C. § 102 based on Nishizawa is believed by the Applicant to no longer apply. Thus, Applicants respectfully request reconsideration and withdrawal of the rejection and allowance of independent claims 1, 13, and 22.

Dependent claims 2, 3, 6, 8-9, and 14-20 depend directly or indirectly from independent claims 1 and 13. As discussed above, it believed that independent claims 1 and 13 are now in condition for allowance. Accordingly, Applicant believes these dependent claims in combination with the corresponding independent claims to be allowable as well.

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**Claim Rejections under 35 U.S.C. § 103**

In the Office Action, claims 4, 7, 10-12, and 21 were rejected under 35 U.S.C. § 103(a) as being unpatentable over Nishizawa in view of Florescu, U.S. Patent. No. 6,561,851 B2 ("Florescu"). The Examiner conceded that Nishizawa does not teach indicating lights indicative of a failure mode, indicating lights having a plurality of colors, or a form factor card being an input output device such as a fax/modem device, but concluded it would have been obvious to one skilled in the art to do so in view of the teaching of Florescu.

However, each of the rejections under 35 U.S.C. § 103(a) are based on the rejection of independent claims 1 and 13 under 35 U.S.C. § 102. As discussed above, Applicant believes that the rejections under 35 U.S.C. § 102 no longer apply. Claims 4, 7, 10-12, and 21 depend directly or indirectly upon corresponding independent claims 1 and 13. In light of the above, it is respectfully submitted that the above rejections of claims 4, 7, 10-12, and 21 under 35 U.S.C. § 103(a) also be withdrawn.

**Allowable Subject Matter**

In light of the above, Applicant believes independent claims 1, 13, and 22 and the claims depending therefrom, are in condition for allowance. Allowance of these claims is respectfully requested.

**CONCLUSION**

Any inquiry regarding this Amendment and Response should be directed to either Steven E. Dick at Telephone No. (612) 573-2002, Facsimile No. (612) 573-2005 or Phil Lyren at Telephone No. (281) 514-8236, Facsimile No. (281) 514-8332. In addition, all correspondence should continue to be directed to the following address:

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Respectfully submitted,

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**CERTIFICATE UNDER 37 C.F.R. 1.8:** The undersigned hereby certifies that this paper or papers, as described herein, are being deposited in the United States Postal Service, as first class mail, in an envelope address to: Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450 on this 14 day of October, 2003.

By Steven E. Dicke  
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